

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE**

LEWIS COSBY, ERIC MONTAGUE, AND
MARTIN ZIESMAN as Co-Trustee for the
Carolyn K. Ziesman Revocable Trust on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

KPMG, LLP

Defendant.

No.: 3:16-cv-00121-TAV-DCP

**LEAD PLAINTIFFS' AND CLASS REPRESENTATIVES' NOTICE
REGARDING NOTICE OF CLASS PENDENCY**

Lead Plaintiffs and Class Representatives Lewis Cosby, Eric Montague and Martin Ziesman, as Co-Trustee for the Carolyn K. Ziesman Trust (“Lead Plaintiffs”) respectfully submit this Notice to advise the Court of certain recent developments relating to Lead Plaintiffs’ Motion for Class Certification. By Order dated May 7, 2021, the Court certified the above-captioned action to proceed as a class action on behalf of two classes consisting of: (1) all persons or entities who purchased or otherwise acquired Miller Energy common stock, Miller Energy 10.75% Series C Cumulative Redeemable Preferred Stock or Miller Energy 10.5% Series D Fixed Rate/Floating Rate Cumulative Redeemable Preferred Stock between August 29, 2011 and July 30, 2015, inclusive (the “Class Period”), and who were damaged thereby (the Section 10(b) Class”); and (2) all persons or entities who purchased or otherwise acquired Miller Energy Series C Preferred Stock or Series D Preferred Stock pursuant to or traceable to the Offering Documents and were damaged

thereby (the “Section 11 Class”) (together with the Section 10(b) Class, the “Classes”).¹ Following the Court’s ruling, Lead Plaintiffs have been diligently preparing a proposed Notice of Pendency and Summary Notice (the “Notices”) and have also secured proposals from several potential vendors for disseminating those Notices to the Classes.

On May 21, 2011, however, Defendant filed with the United States Court of Appeals for the Sixth Circuit a petition for leave to appeal this Court’s grant of class certification, pursuant to Rule 23(f) of the Federal Rules of Civil Procedure. Although Lead Plaintiffs believe that Defendant’s Petition is without merit and opposed the Petition on June 1, 2021 in accordance with the Federal Rules of Appellate Procedure, Lead Plaintiffs acknowledge that in similar circumstances, courts have ordered parties hold in abeyance the dissemination of a notice of pendency to the class “to avoid the confusion and substantial expense of renotification that may result from appellate reversal or modification after notice dissemination,” Manual for Complex Litigation (Fourth) § 21.28 (2004); *see also In re Southeastern Milk Antitrust Litig.*, No. 2:08-MD-1000, 2011 WL 13122693 at *10 (E.D. Tenn. Jan. 19, 2011) (staying notice dissemination while Rule 23(f) petition was pending); *Beattie v. CenturyTel, Inc.*, No. 02-10277-BC, 2006 WL 1722207, at *8 (E.D. Mich. June 20, 2006) (same); *Weiner v. Tivity Health, Inc.*, No. 3:17-cv-01469, ECF No. 100 (M.D. Tenn. February 18, 2020) (notice by Lead Plaintiff that it planned to hold notice in abeyance while the Rule 23(f) petition was pending).

Accordingly, Lead Plaintiffs respectfully notify the Court that, in the interest of the Classes, Lead Plaintiffs intend to submit draft Notices and a proposed plan for disseminating the Notices

¹ Excluded from the Class are KPMG, the Officers, Directors, Partners and affiliates of KPMG at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which KPMG has or had a controlling interest. *See* Memorandum Opinion and Order, ECF No. 211.

promptly after the Sixth Circuit resolves Defendant's Petition and in accordance with that Court's ruling, unless this Court directs Lead Plaintiffs to provide these materials on a different schedule.² Lead Plaintiffs are, of course, available at the Court's convenience to address any questions the Court may have with respect to this issue.

June 3, 2021

Respectfully submitted,

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Co-Lead Counsel for Plaintiffs

² Lead Plaintiffs have conferred with Defendant, who has no objection to deferring issuance of the Class Notice during the pendency of the 23(f) petition.

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2021, I caused the foregoing to be filed using the Court's CM/ECF system, which in turn sent notice to counsel of record.

Dated: June 3, 2021

/s/ Gordon Ball

Gordon Ball